

AN ACT

RELATING TO THE IOWA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION REGARDING COVERAGE, BENEFITS, DUTIES, POWERS, RIGHTS, THE OPERATION OF THE IOWA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION, AND THE COORDINATION OF COVERAGE AND BENEFITS WITH THOSE OF SIMILAR ASSOCIATIONS OF OTHER STATES, AND TO THE IOWA INSURANCE GUARANTY ASSOCIATION WITH RESPECT TO COVERED CLAIMS, BENEFITS, LIMITATIONS, DUTIES, AND POWERS OF THE IOWA INSURANCE GUARANTY ASSOCIATION, AND COORDINATION AND COOPERATION BY IT WITH SIMILAR ASSOCIATIONS OF OTHER STATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 508C.3, subsection 1, paragraph b, Code 2009, is amended to read as follows:

b. Persons who are owners of the policies or contracts specified in subsection 2, other than unallocated annuity contracts and structured settlement annuities, or are insureds or annuitants under the policies or contracts, and who are either of the following:

(1) Residents of this state.

(2) Nonresidents of this state if all of the following conditions are met:

(a) The state in which the person resides has an association similar to the association created in this chapter.

(b) The person is not eligible for coverage by an association described in subparagraph part (a) in any other state due to the fact that the insurer was not licensed in the state at the time specified in that state's guaranty association law.

~~(c) The insurer which issued the policy or contract never held a license or certificate of authority in the state in which the person resides.~~

~~(d)~~ (c) The insurer is domiciled in this state.

Sec. 2. Section 508C.3, subsection 1, Code 2009, is amended by adding the following new paragraphs:

NEW PARAGRAPH. c. Persons who are the owners of unallocated annuity contracts if the contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state.

NEW PARAGRAPH. d. (1) A payee, or the beneficiary of a payee if the payee is deceased, of a structured settlement annuity, if the payee or beneficiary of the structured settlement annuity is either of the following:

(a) The payee or beneficiary of the structured settlement annuity is a resident of this state regardless of where the owner of the structured settlement annuity resides.

(b) The payee or beneficiary of the structured settlement annuity is not a resident of this state and either of the following conditions is met:

(i) The owner of the structured settlement annuity is a resident of this state.

(ii) The owner of the structured settlement annuity is not a resident of this state and both of the following are applicable:

(A) The insurer that issued the structured settlement annuity is domiciled in this state.

(B) The state in which the owner of the structured settlement annuity resides has an association similar to the association created by this chapter.

(2) Subparagraph (1), subparagraph division (b) shall not be applicable if either the payee or beneficiary of the payee if the payee is deceased, or the owner of the structured settlement annuity is eligible for coverage by the association of the state in which the payee, beneficiary, or owner resides.

e. Coverage under this chapter shall not be provided to any of the following:

(1) A person who is a payee, or the beneficiary of a payee if the payee is deceased, of a contract owner who is a resident of this state, if the payee or the beneficiary of the payee is

provided any coverage by the association of another state.

(2) A person who is covered pursuant to paragraph "c" if that person is provided any coverage by the association of another state.

NEW PARAGRAPH. *f.* Coverage under this chapter shall be provided to a person who is a resident of this state and, only in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, that person shall not be provided coverage under this chapter. In determining the application of the provisions of this paragraph in situations where a person could be provided coverage by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by the association of only one state.

Sec. 3. Section 508C.3, subsection 3, paragraphs a, b, and d, Code 2009, are amended to read as follows:

a. Any portion of a policy or contract to the extent that the rate of interest on which it is based or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract and employed in calculating returns or changes in value, averaged over the period of four years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average for the same four-year period or over such lesser period if the policy or contract was issued less than four years before the association became obligated; and on or after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available.

b. That portion or part of a policy or contract not guaranteed by the insurer, or under which the risk is borne by

the policyholder.

d. An unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation regardless of whether the federal pension benefit guaranty corporation has yet become liable to make any payments with respect to the benefit plan, or a portion of an unallocated annuity contract which is not issued to or in connection with a specific employee, union, or association of natural persons, or any portion of a financial guarantee.

Sec. 4. Section 508C.3, subsection 3, paragraph g, Code 2009, is amended by striking the paragraph and inserting in lieu thereof the following:

g. A charitable gift annuity under chapter 508F.

Sec. 5. Section 508C.3, subsection 3, paragraph j, Code 2009, is amended to read as follows:

j. An obligation that does not arise under the express written terms of a covered policy- or contract issued by the insurer to the policy or contract owner including without limitation all of the following:

(1) Claims based on marketing materials.

(2) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements.

(3) Misrepresentation of or regarding policy benefits.

(4) Extra-contractual claims.

(5) Claims for penalties, consequential, or incidental damages.

Sec. 6. Section 508C.3, subsection 3, Code 2009, is amended by adding the following new paragraphs:

NEW PARAGRAPH. *m.* A policy or contract issued in this state by a member insurer at a time the insurer was not licensed or did not have a certificate of authority to issue the policy or contract in this state.

NEW PARAGRAPH. *n.* A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to

employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or other person under any of the following:

(1) A multiple employer welfare arrangement as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40.

(2) A minimum premium group insurance plan.

(3) A stop-loss group insurance plan.

(4) An administrative services-only contract.

NEW PARAGRAPH. *o.* A portion of a policy or contract to the extent that it provides for any of the following:

(1) Dividends of experience rating credits.

(2) Voting rights.

(3) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with service to or administration of the policy or contract.

NEW PARAGRAPH. *p.* A portion of a policy or contract to the extent that the assessments authorized by section 508C.9 with respect to the policy or contract are preempted by federal or state law.

NEW PARAGRAPH. *q.* A policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to 42 U.S.C. ch. 7, subc. XVIII, Part C or Part D, commonly known as Medicare Part C and D pursuant to Tit. XVIII of the federal Social Security Act, or any regulations issued pursuant thereto.

Sec. 7. Section 508C.3, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 4. In performing its obligations to provide coverage under this chapter, the association shall not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of an insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy

or contract.

Sec. 8. Section 508C.5, subsection 4, Code 2009, is amended to read as follows:

4. "*Contractual obligation*" means an obligation under a covered policy or contract or a certificate under a group policy or contract, or a portion thereof for which coverage is provided under section 508C.3.

Sec. 9. Section 508C.5, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. "*Extra-contractual claim*" means, without limitation, a claim relating to bad faith in the payment of claims, punitive or exemplary damages, or attorney fees and costs.

Sec. 10. Section 508C.5, subsections 6, 7, and 8, Code 2009, are amended to read as follows:

6. "*Impaired insurer*" means a member insurer which, after July 1, 1987, ~~is either of the following:~~

~~a. Deemed by the commissioner to be potentially unable to fulfill its contractual obligations but is not an insolvent insurer;~~

~~b. Placed but is placed~~ under an order of rehabilitation or conservation by a court of competent jurisdiction.

7. "*Insolvent insurer*" means a member insurer which, after July 1, 1987, ~~becomes insolvent and~~ is placed under a final an order of liquidation with a finding of insolvency by a court of competent jurisdiction.

8. "*Member insurer*" means a person licensed or who holds a certificate of authority to transact in this state any kind of insurance ~~to which this chapter applies~~ for which coverage is provided under section 508C.3, including a person whose license or certificate of authority in this state has been suspended, revoked, not renewed, or voluntarily withdrawn. but not including any of the following:

a. An entity which is a licensed company specified in section 508C.3, subsection 3, paragraph "e" or "f".

b. A mandatory state pooling plan.

c. A mutual assessment company or other person which operates on an assessment basis.

d. An insurance exchange.

e. An entity which issues a charitable gift annuity under chapter 508F.

f. An entity similar to any of the entities enumerated in this subsection.

Sec. 11. Section 508C.5, Code 2009, is amended by adding the following new subsections:

NEW SUBSECTION. 8A. *"Moody's corporate bond yield average"* means the monthly average corporate bond yields published by Moody's investors service, inc., or any successor thereto.

NEW SUBSECTION. 8B. *"Owner"* of a policy of contract, *"policy owner"*, or *"contract owner"* means the person who is identified as the legal owner of a policy or contract under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. *"Owner"*, *"policy owner"*, or *"contract owner"* does not include a person with a mere beneficial interest in a policy or contract.

Sec. 12. Section 508C.5, subsection 9, Code 2009, is amended to read as follows:

9. *"Person"* means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or ~~voluntary organization~~ any other legal entity.

Sec. 13. Section 508C.5, subsections 10 and 11, Code 2009, are amended by striking the subsections and inserting in lieu thereof the following:

10. *"Premium"* means amounts or consideration, by whatever name called, received on covered policies or contracts less returned premiums, considerations, and deposits and less dividends and experience credits. *"Premium"* does not include amounts for consideration received for policies or contracts or for the portions of policies or contracts for which coverage

is not provided under section 508C.3, subsection 3, except that assessable premium shall not be reduced on account of the provisions of section 508C.3, subsection 3, paragraph "a", relating to interest limitations and section 508C.8, subsection 8, paragraph "a", subparagraph (2), subparagraph division (a), relating to limitations with respect to one individual, one participant, and one owner. "Premium" also does not include any of the following:

a. Premiums in excess of five million dollars on an unallocated annuity contract not issued under a governmental retirement plan, or its trustee, established under section 401, 403(b), or 457 of the United States Internal Revenue Code.

b. With respect to multiple nongroup policies of life insurance owned by one owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of five million dollars with respect to those policies or contracts, regardless of the number of policies or contracts held by the owner.

11. "Resident" means a person to whom a contractual obligation is owed and who resides in a state on the date of entry of a court order that determines a member insurer is an impaired insurer or a court order that determines a member insurer is an insolvent insurer, whichever occurs first. A person may be a resident of only one state, which in the case of a person other than a natural person shall be the state of that person's principal place of business. A citizen of the United States who is a resident of a foreign country, or is a resident of a United States possession, territory, or protectorate that does not have an association similar to the association created by this chapter, shall be deemed a resident of the state or domicile of the insurer that issued the policy or contract.

Sec. 14. Section 508C.5, Code 2009, is amended by adding the following new subsections:

NEW SUBSECTION. 11A. "State" means a state, the District of Columbia, Puerto Rico, or a United States possession,

territory, or protectorate.

NEW SUBSECTION. 11B. "*Structured settlement annuity*" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injuries suffered by the plaintiff or other claimant.

Sec. 15. Section 508C.5, subsection 12, Code 2009, is amended to read as follows:

12. "*Supplemental contract*" means ~~an~~ a written agreement entered into for the distribution of ~~policy or contract~~ proceeds under a life, health, or annuity policy or contract.

Sec. 16. Section 508C.8, subsection 1A, Code Supplement 2009, is amended by striking the subsection.

Sec. 17. Section 508C.8, subsection 2, Code Supplement 2009, is amended by striking the subsection and inserting in lieu thereof the following:

2. If a member insurer is an insolvent insurer, the association may in its discretion do any of the following:

a. The association may do either of the following:

(1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the covered policies or contracts of an insolvent insurer.

(2) Assure payment of the contractual obligations of the insolvent insurer.

b. Provide moneys, pledges, notes, guarantees, or other means as reasonably necessary to discharge the duties described in this subsection.

c. Provide benefits and coverages in accordance with all of the following provisions:

(1) With respect to life and health insurance policies or contracts and annuity contracts, assure payment of benefits for premiums identical to the premiums and benefits, except for conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer for the following claims incurred as follows:

(a) With respect to group policies or contracts, not later than the earlier of the next renewal date under those policies

or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to those policies or contracts.

(b) With respect to nongroup policies or contracts not later than the earlier of the next renewal date, if any, under those policies or contracts or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to the policies or contracts.

(2) Make diligent efforts to provide all known insureds or annuitants, for nongroup policies or contracts, or group policy owners, with respect to group policies or contracts, thirty days' notice of the termination of the benefits provided pursuant to subparagraph (1).

(3) With respect to nongroup life and health insurance policies or contracts covered by the association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy or contract who is not eligible for replacement group coverage, substitute coverage on an individual basis in accordance with the provisions of subparagraph (4), if the insureds or annuitants had a right under law or under the terminated policy or contract to convert coverage to individual coverage or to continue an individual policy or contract in force until a specified age or for a specified time, during which the insurer had no right to unilaterally make changes in any provision of the policy or contract or had a right only to make changes in premium by class.

(4) In providing the substitute coverage required under subparagraph (3), the association may offer either to reissue the terminated coverage or to issue an alternative policy or contract.

(a) Reissued or alternative policies or contracts shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy or contract.

(b) The association may reinsure any reissued or alternative policy or contract.

(5) Alternative policies or contracts adopted by the association shall be subject to the approval of the domiciliary insurance commissioner and the receivership court. The association may adopt alternative policies or contracts of various types for future issuance without regard to any particular impairment or insolvency of an insurer.

(a) Alternative policies or contracts shall contain at least the minimum statutory provisions required in this state and shall provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that the association shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy or contract was last underwritten.

(b) Any alternative policy or contract issued by the association shall provide coverage of a type similar to that of the policy or contract issued by the impaired or insolvent insurer, as determined by the association.

(6) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy or contract the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary insurance commissioner and the receivership court.

(7) The association's obligations with respect to coverage under any policy or contract of an impaired or insolvent insurer or under any reissued or alternative policy or contract, shall cease on the date the coverage, or policy or contract, is replaced by another similar policy or contract by the policy or contract owner, or the association.

(8) When proceeding under this paragraph "c" with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of

a rate of interest consistent with section 508C.3, subsection 3, paragraph "a".

Sec. 18. Section 508C.8, subsections 6 and 7, Code Supplement 2009, are amended to read as follows:

6. a. The association ~~has~~ shall have standing to appear or intervene before any court or agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter or with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise. Standing shall extend to all matters germane to the powers and duties of the association including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the covered policies or contracts of the impaired or insolvent insurer and the determination of the covered policies or contracts, and contractual obligations. The association shall also have the right to appear or intervene before any court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

b. As a creditor of an impaired or insolvent insurer as provided under section 508C.13, subsection 3, and consistent with the provisions of section 507C.34, the association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse the association or similar associations, as a credit against contractual obligations under this chapter. If the liquidator has not, within one hundred twenty days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, the association or similar associations shall be entitled to make

application to the receivership court for approval of its own proposal to disburse these assets.

7. a. A person receiving benefits under this chapter is deemed to have assigned the rights under any causes of action against any person for losses arising under, resulting from, or otherwise relating to the covered policy or contract to the association to the extent of the benefits received under this chapter, whether the benefits are payments of or on account of contractual obligations, or a continuation of coverage, or the provision of substitute or alternative coverages. The association may require an assignment to the association of the rights and causes of action by a any payee, policyholder or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon the person. The association shall be subrogated to these rights against the assets of the impaired or insolvent insurer.

b. The subrogation rights of the association under this subsection have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

c. In addition to the rights pursuant to subsection 3, paragraphs "a" and "b", the association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or holder owner, beneficiary, or payee of a covered policy or contract with respect to the policy or contract, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to this chapter, against the person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment for the annuity, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the Internal Revenue Code.

d. If the provisions of paragraphs "a" through "c" are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or contracts, or portion thereof, covered by the association.

e. If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in paragraphs "a" through "d", the person shall pay to the association the portion of the recovery attributable to the policies or contracts, or portion thereof, covered by the association.

Sec. 19. Section 508C.8, subsection 8, paragraph a, subparagraph (2), subparagraph division (a), subparagraph subdivisions (i) and (ii), Code Supplement 2009, are amended to read as follows:

(i) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance, ~~or three hundred fifty thousand dollars in the aggregate.~~

(ii) Three Five hundred thousand dollars for health insurance benefits which are basic hospital expense coverage, basic medical-surgical expense coverage, or major medical expense coverage as defined by the commissioner by rule pursuant to section 514D.4; three hundred thousand dollars for health insurance benefits which are disability income protection as defined by the commissioner by rule pursuant to section 514D.4; three hundred thousand dollars for long-term care insurance as defined in section 514G.103; or one hundred thousand dollars for other health insurance benefits including any net cash surrender and net cash withdrawal values.

Sec. 20. Section 508C.8, subsection 8, paragraph a, subparagraph (2), subparagraph division (a), Code Supplement 2009, is amended by adding the following new subparagraph

subdivision:

NEW SUBPARAGRAPH SUBDIVISION. (iv) With respect to each payee of a structured settlement annuity, or the beneficiary or beneficiaries of the payee if the payee is deceased, two hundred fifty thousand dollars in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values.

Sec. 21. Section 508C.8, subsection 8, paragraph a, subparagraph (2), subparagraph division (b), Code Supplement 2009, is amended to read as follows:

(b) (i) With respect to each individual participating in a benefit plan established under section 401, 403(b), or 457 of the United States Internal Revenue Code, or each unallocated annuity contract account, excluding a plan established under section 401, 403(b), or 457 of the United States Internal Revenue Code, not more than two hundred fifty thousand dollars in the aggregate, in present value annuity benefits, including net cash surrender and net cash withdrawal values for the beneficiaries of the deceased individual.

(ii) However, the association shall not in any event be obligated to cover more than an aggregate of three hundred fifty thousand dollars in benefits with respect to any one life under subparagraph division (a) and this subparagraph division (b), except with respect to benefits for basic hospital expense coverage, basic medical-surgical expense coverage, or major medical expense coverage under subparagraph division (a), subparagraph subdivision (ii), in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual, or more than five million dollars in benefits to one owner of multiple nongroup policies of life insurance regardless of whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, and regardless of the number of policies and contracts held by the owner.

Sec. 22. Section 508C.8, Code Supplement 2009, is amended by

adding the following new subsections:

NEW SUBSECTION. 11. *a.* (1) At any time within one hundred eighty days of the date of an order of liquidation, the association may elect to succeed to the rights and obligations of a ceding member insurer that relate to policies or contracts covered, in whole or in part, by the association in each case under any reinsurance contract entered into by the insolvent insurer and its reinsurers, selected by the association. Any such assumption of rights and obligations shall be effective as of the date of the order of liquidation. The election shall be effected by the association or by the national organization of life and health insurance guaranty associations on its behalf by sending written notices, return receipt requested, to the affected reinsurers. As used in this subsection, "*date of election*" means the date of the election of the association to succeed to the rights and obligations of the ceding member insurer as provided in this subparagraph.

(2) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance of the ceding member insurer, and in order to protect the financial position of the state, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the association, or to the national organization of life and health insurance guaranty associations on its behalf, as soon as possible after commencement of formal delinquency proceedings all of the following:

(a) Copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed.

(b) Notices of any defaults under the reinsurance contracts or any known event or condition which with the passage of time could become a default under the reinsurance contract.

(3) The following provisions shall apply to reinsurance contracts so assumed by the association:

(a) The association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both

before and after the date of the order of liquidation and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies or contracts covered, in whole or in part, by the association. The association may charge policies or contracts covered in part by the association, through reasonable allocation methods, the cost for reinsurance in excess of the obligations of the association and shall provide notice and an accounting of these charges to the liquidator.

(b) The association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies or contracts covered, in whole or in part, by the association, provided that, upon receipt of any such amounts, the association shall be obliged to pay to the beneficiary under the policy or contract on account of which the amounts were paid, a portion of the amount equal to the lesser of any of the following:

(i) The amount received by the association.

(ii) The excess of the amount received by the association over the amount equal to the benefits paid by the association on account of the policy or contract less the retention of the insurer applicable to the loss or event.

(c) Within thirty days following the date of election, the association and each reinsurer under reinsurance contracts assumed by the association shall calculate the net balance due to or from the association under each reinsurance contract as of the date of election with respect to policies or contracts covered, in whole or in part, by the association, which calculation shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the date of election. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any setoff for premiums unpaid for periods prior to the date, and the association or reinsurer

shall pay any remaining balance due the other, in each case within five days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the association pursuant to subparagraph division (b), the receiver shall remit the same to the association as promptly as practicable.

(d) If the association or receiver, on the association's behalf, within sixty days of the date of election, pays the unpaid premiums due for periods both before and after the date of election that relate to policies or contracts covered, in whole or in part, by the association, the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premiums insofar as the reinsurance contracts relate to policies or contracts covered, in whole or in part, by the association, and shall not be entitled to set off any unpaid amounts due under other policies or contracts, or unpaid amounts due from parties other than the association, against amounts due the association.

b. During the period from the date of the order of liquidation, until the date of election or, if the association does not elect to succeed to the rights and obligations of the ceding member insurer as provided in paragraph "a", subparagraph (1), until one hundred eighty days after the date of the order of liquidation all of the following provisions are applicable:

(1) The association and the reinsurer shall not have any rights or obligations under reinsurance contracts that the association has the right to assume under paragraph "a", whether for periods prior to or after the date of liquidation.

(2) The reinsurer, the receiver, and the association shall, to the extent practicable, provide each other with data and records reasonably requested.

(3) Once the association elects to assume a reinsurance

contract, the parties' rights and obligations shall be governed by the provisions of paragraph "a".

c. If the association does not elect to assume the rights and obligations under a reinsurance contract, the association shall have no rights or obligations in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

d. When policies or contracts, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies or contracts may also be transferred by the association, in the case of rights and obligations under reinsurance contracts assumed under paragraph "a", subject to the following provisions:

(1) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contracts transferred shall not cover any new policies or contracts of insurance in addition to those transferred.

(2) The obligations described in paragraph "a" shall no longer apply with respect to matters arising after the effective date of the transfer.

(3) Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than thirty days prior to the effective date of the transfer.

e. This subsection shall supersede the provisions of any state law or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver of the insolvent insurer or any other person. The receiver shall remain entitled to any amounts payable by the reinsurer under the reinsurance contract with respect to losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions.

f. Except as otherwise provided in this subsection, this subsection shall not be construed to do any of the following:

(1) Alter or modify the terms and conditions of any reinsurance contract.

(2) Abrogate or limit any rights of any reinsurer to claim that the reinsurer is entitled to rescind a reinsurance contract.

(3) Give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract.

(4) Limit or affect the association's rights as a creditor of the state against the assets of this state.

(5) Apply to reinsurance agreements covering property or casualty risks.

NEW SUBSECTION. 12. The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association will provide the benefits of this chapter in an economical and efficient manner.

NEW SUBSECTION. 13. Where the association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the association's obligations under this chapter, the person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

NEW SUBSECTION. 14. Venue in a suit against the association arising under this chapter shall be in the district court of Polk county. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

NEW SUBSECTION. 15. In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subsections 2 and 3, the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by the use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by

issuing an alternative policy or contract in accordance with the following provisions:

a. In lieu of the index or other external reference provided for in the original policy or contract the alternative policy or contract provides for one of the following:

- (1) A fixed interest rate.
- (2) Payment of dividends with minimum guarantees.
- (3) A different method for calculating interest or changes in value.

b. There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract.

c. The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

Sec. 23. Section 515B.2, subsection 4, paragraph b, subparagraph (4), Code Supplement 2009, is amended by striking the subparagraph and inserting in lieu thereof the following:

(4) That is a fee or other amount relating to goods or services sought by or on behalf of an attorney, adjuster, witness, or other provider of goods or services retained by the insolvent insurer or by an insured prior to the date the insurer was declared insolvent.

Sec. 24. Section 515B.2, subsection 4, paragraph b, Code Supplement 2009, is amended by adding the following new subparagraphs:

NEW SUBPARAGRAPH. (5A) That is a fee or other amount sought by or on behalf of any attorney, adjuster, witness, or other provider of goods or services retained by the insured or claimant in connection with the assertion of any claim, covered or otherwise, against the association.

NEW SUBPARAGRAPH. (5B) That is a claim filed with the association or a liquidator for protection afforded under the insured's policy or contract for incurred but not reported losses or expenses.

Sec. 25. Section 515B.2, Code Supplement 2009, is amended by

adding the following new subsection:

NEW SUBSECTION. 6A. "*Liquidator*" means a receiver as defined in section 507C.2, or a comparable person appointed by the courts of the domiciliary state of a foreign insurer.

Sec. 26. Section 515B.5, subsection 1, paragraph a, subparagraph (3), Code 2009, is amended to read as follows:

(3) An amount not exceeding the lesser of the policy limits or ~~three~~ five hundred thousand dollars per claim for all covered claims for all damages arising out of any one or series of accidents, occurrences, or incidents, regardless of the number of persons making claims or the number of applicable policies.

Sec. 27. Section 515B.14, Code 2009, is amended to read as follows:

515B.14 Immunity.

There ~~is~~ shall be no liability on the part of, and no cause of action of any nature shall arise against ~~any~~ a member insurer, the association, or its agents or employees, the board of directors or any person serving as an alternate or substitute representative of any director, or the commissioner, or the commissioner's representatives, for any ~~reasonable~~ action taken or any failure to act by them in the performance of their duties and powers under this chapter.

Sec. 28. NEW SECTION. 515B.19 **Coordination among guaranty associations.**

1. The association may join one or more organizations of other state associations of similar purpose, to further the purposes and administer the powers and duties of the association. The association may designate one or more of these organizations to act as a liaison for the association and, to the extent the association authorizes, to bind the association in agreements or settlements with receivers of insolvent insurance companies or their designated representatives.

2. The association, in cooperation with other obligated or potentially obligated guaranty associations or their designated representatives, shall make all reasonable efforts to coordinate and cooperate with receivers or their designated

representatives, in the most efficient and uniform manner,
including the use of uniform data standards as promulgated
or approved by the national association of insurance
commissioners.

JOHN P. KIBBIE
President of the Senate

PATRICK J. MURPHY
Speaker of the House

I hereby certify that this bill originated in the Senate and
is known as Senate File 2272, Eighty-third General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2010

CHESTER J. CULVER
Governor